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SOUTHERN DISTRICT OF NEW YORK

No. 327

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942—NO. 327

FRED FISHER MUSIC CO. INC. and GEORGE
GRAFF, JR.,

Petitioners,

against

M. WITMARK & SONS,

Respondent.

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI**

ROBERT W. PERKINS,
Solicitor for Respondent.

STUART H. AARONS,
SIDNEY BARROWS,
of Counsel.

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Introductory Statement

Petitioner Graff, in collaboration with another, wrote the words of the song "WHEN IRISH EYES ARE SMILING" pursuant to a contract under which respondent was granted the "copyright or copyrights of" the song "with renewals and with right to copyright and renew", subject to the payment of royalties (R. 37, 38). Several years later, Petitioner Graff, in consideration of a lump sum payment, relinquished his right to royalties, confirmed in respondent "all copyrights and renewals of copyrights and the right to secure all copyrights and renewals of copyrights" in the song, and formally appointed respondent his attorney to take such action as might be

necessary to secure to respondent the renewal term of the copyright (R. 44). Accordingly, at the beginning of the twenty-eighth year of the original term, respondent renewed the copyright in the name of Petitioner Graff and assigned it to itself. A few days later, Petitioner Graff purported to renew the copyright and to assign it to Petitioner Fisher, who had full knowledge of all the facts, and who proceeded to publish the song.

Respondent sued for an injunction and an accounting for profits, and damages, and made a motion for an injunction *pendente lite* restraining petitioners from publishing the song. The motion was granted upon affidavits and counter-affidavits (R. 81). On appeal, the Circuit Court of Appeals affirmed the order for the preliminary injunction, Judge Frank dissenting.^{*} Both the majority and dissenting opinions were concerned largely with the question of whether the Copyright Act of 1909** makes invalid any assignment or agreement to assign the renewal term before the twenty-eighth year of the original term. On this question the majority opinion held that although the statute made the author's right to the renewal term expressly contingent upon his being alive during the twenty-eighth year, it did not restrict his right to assign the renewal term while it was still contingent, and if the author was alive the assignee took the renewal term. Judge Frank dissented, saying that the statute as a matter of policy made invalid any assignment of the renewal term while contingent. The two opinions differed on a question of fact affecting their respective interpretations of the statute. Both opinions also considered other questions of law and fact not affecting the statutory question.

^{*} 125 F. (2d) 949, 954; R. 95, 105.

^{**} 37 Stat. 1075.

POINT I

Certiorari should not be granted because the order is not final.

Petitioners frankly point out that the order sought to be reviewed is interlocutory. They seek to avoid the usual rule in such cases by making the following statement:

"However, in the instant case, the sole issue presented is one of statutory construction. The facts upon which this question is presented are not in dispute * * * (Petition, p. 7).

Both of the sentences quoted from the petition are erroneous. On a question of fact relating solely to statutory construction, there was a sharp disagreement between the majority and dissenting opinions in the Circuit Court of Appeals. The majority found there had been a fairly uniform interpretation, presumably acted upon by the trade, that an author could make binding agreements with respect to his contingent right to renew (R. 101). Judge Frank disputed this (R. 115).

Further, petitioners forget that there were questions of fact and law involved in the decision of the Circuit Court of Appeals not relating to the question of statutory construction, and that the majority and dissenting opinions below differed on those questions. Thus Judge Clark, writing for the majority, stated:

"We are limiting our discussion, as did the parties before us, to the question of statutory interpretation. On this interlocutory issue we ought not to foreclose other contentions which the parties may wish and be entitled to raise on the merits, including possibly claims of inadequacy of consideration

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in 1917 so gross as to prevent negative enforcement of the assignment, with which would go the question of adequacy of damages as a remedy for breach. 2 Restatement, Contracts, §§ 358, 363, 367, 380. But we think we should say that the record contains no evidence which casts doubt on the consideration; certainly defendant Graff's statement that royalties on the songs covered by the assignment had amounted to as much as \$5,000 annually (i.e., as a maximum) does not do so, particularly in view of the well-known ephemeral nature of popular song hits." (R. 104, 105)

In contrast, Judge Frank argues as the first point in his dissenting opinion that the order for a preliminary injunction should be reversed for reasons having nothing to do with statutory construction. He states:

"That order was improper, if, on the facts presented, assuming, for present purposes, that they will be the facts on final hearing, it seems unlikely that plaintiff will be granted the final relief sought, a decree for specific performance. I think the order should be reversed, because on the facts as they now appear, a court of equity should not grant specific performance, in the light of the subject matter of the contract, the circumstances and relations of the parties when it was made, and the consideration paid." (R. 105, 106).

He devotes four pages of his dissent to a discussion of the law and the facts involved in this proposition with an extended discussion of authorities (R. 105, 109, incl.).

In their discussion of the finality of the proceeding petitioners make the following statement:

"Should this writ be granted and the question of law determined in accordance with the petitioners'

contentions, the practical effect will be a final determination of the action *adverse to the respondent*. (Italics ours.) (Petition, p. 7)

We believe that the question of law should be decided against petitioners' contentions, and petitioners nowhere admit that in such event the action would be finally determined.

The preliminary injunction was granted on affidavits and counter-affidavits. If certiorari is denied the case will proceed to trial in the usual course. If the testimony at the trial establishes facts differing from those shown by the affidavits in the present proceedings, the trial may result in the denial of the relief sought on facts and law having nothing to do with the construction of the statute.

No possibility of the disposition of the case on issues not reviewed by the Supreme Court existed in any of the four cases relied upon by petitioners to get around the difficulty confronting them in the lack of finality of the order sought to be reviewed. The general rule is succinctly stated in *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U. S. 251, 258:

"And, except in extraordinary cases, the writ is not issued until final decree. *Amex. Const. Co. v. Jacksonville Railway*, 148 U. S. 372, 378, 384; *The Three Friends*, 166 U. S. 1, 49; *The Conqueror*, 166 U. S. 110, 113; *Denver v. N. Y. Trust Co.*, 229 U. S. 123, 133. The decree that was sought to be reviewed by certiorari at complainant's instance was not a final one, a fact that of itself alone furnished sufficient ground for the denial of the application;

POINT II

This is not a case of first impression.

Petitioners contend that this is a case of first impression. But they admit that on the question of statutory construction the Act of 1831 is the same as the Act of 1909. We submit that *Paige v. Banks*, 13 Wall. 608, is a decision under the Act of 1831 holding that contingent rights of renewal are assignable. Although Judge Clark states that the question of statutory construction "has apparently never arisen before", in the second footnote of his opinion he agrees with our interpretation of *Paige v. Banks*.^{*} It is true that the assignment held valid in that case was made in 1828 before the Act of 1831 was passed, but the renewal term involved was created by the Act of 1831. This is clearly shown in the facts given in the report of the same case below in 7 Blatch: 152.

POINT III

Certiorari should be denied because the statutory question raised affects practices presumably long continued, under which rights are vested, and involves questions of policy which should be left to Congress.

The majority opinion gave much weight to the practical construction that had been given to the statute. It says:

"If we could find that the statute had been interpreted—in the light of the committee's report—to forbid such assignments as we find here, we might well be inclined to give the committee the benefit of any doubts as to the language they had

^{*}R. 95, 97.

chosen. * * * But we do not find such interpretation; so far as we can ascertain, the general view has been to the contrary." (R. 100).

The opinion then quotes the opinion of Assistant Attorney General Fowler rendered soon after the passage of the Act:

"no doubt it (the renewal) may be the subject of a valid contract before renewal, which would carry the equitable, if not the legal, title thereto when renewed." 28 Ops. Atty. Gen. 162, 169." (R. 100)

The majority opinion further says:

"Such also appears to have been the attitude of the people affected by copyright law as manifested in the treatises on the subject" (R. 100).

citing the many treatises published before and after 1909. To this list of treatises there should be added the one just published in which the former Assistant Register of Copyrights states:

"The statute does not prevent the author from specifically agreeing to assign in futuro his own renewal rights, but the fulfillment of such contract is contingent upon his surviving into the renewal year". Howell, The Copyright Law, 108.

From the treatises, the majority presumed that the trade had acted upon the basis that the author could make binding agreements with respect to his contingent renewal rights (R. 101).

This practical construction is one with which courts should be loathe to interfere, since any change should be made by the Legislature. *Bate Refrigerating Co. v. Sulzberger*, 157 U. S. 1, 37, 44; *United States v. Finnell*,

185 U. S. 236, 244. Disposition of the matter by Congress is appropriate because legislation would affect only future transactions, whereas adjudication by the court upsets what has taken place in the past. This point is clearly stated in the majority opinion:

"Notwithstanding this history, we might well be moved by a demonstration that only by holding all assignments void could we further the policy of the act. But even this seems to us quite doubtful. True, it would be nice for an author to look forward to more money when the renewal time comes. But he can do that by not assigning. What we would be saying is that all authors who have already assigned can eat their cake and have it too. Only in the future would such a ruling be fair all around." (R. 103)

Aside from the question of upsetting past transactions, there are difficult problems of policy in determining whether or not the renewal term should be inalienable before it vests. The majority opinion states the problem as follows:

"Furthermore, it is not clear that authors wish to be deprived of the privilege of obtaining more money now, or that a widow whose husband dies penniless wishes to be deprived of the privilege of anticipating on her statutory renewal right." (R. 103)

Moreover, if renewal rights are made unassignable prior to the twenty-eighth year, then when the original term has almost expired and only the few remaining years of that term could be disposed of, the work might become unmarketable. For instance, near the end of the original term a motion picture producer could not afford to pur-

chase a story because the limited term which he could acquire would not justify the investment necessary for the production of the picture. It is true that even on our interpretation the acquisition of the renewal term involves some risk, but there is always a risk in purchasing property in which there are contingent estates. Our interpretation tends towards the preservation of the marketability of literary works, with the resultant possibility of public enjoyment, and unlike petitioners' contention, does not take valuable literary property off the market toward the end of the original term.

The majority opinion emphasizes the fact that many bills, amendatory to the Statute of 1909, have been introduced into Congress, on the assumption that contingent rights of renewal under the Act of 1909 are assignable (R. 102, 103). Problems of copyright and copyright reform have been continually before Congress. The statute has been amended ten times since 1909*. There are now pending eleven bills, at least three of which are of comprehensive nature (C. C. H. Congressional Index Service 1941-2, pp. 3303 ff.). In the face of such legislative activity, it would seem appropriate for this Court to refrain from passing upon the question sought to be reviewed.

POINT IV

Petitioners' arguments to support their construction of the Act of 1909 are unsound.

Copyright legislation in this country has extended over a period of one hundred and fifty years. Following the

* 37 Stat. 488 (1912); 37 Stat. 724 (1913); 38 Stat. 311 (1914); 41 Stat. 369 (1919); 44 Stat. 818 (1926); 45 Stat. 713 (1928); 53 Stat. 1142 (1939); 54 Stat. 51 (1940) (amended Section 23 of Copyright Act of 1909); 54 Stat. 106 (1940); Sept. 25, 1941, P. L. 258.

precedent of the earliest English statute,—8 Anne, c. 19, 1709,—it has always provided for two terms of copyright, an original term and a renewal term. The renewal term has always been a contingent term, depending upon survivorship. In our earliest statute, that of 1790 (1 Stat. 124), the author's right to the renewal term, as in all subsequent statutes, was contingent on his surviving. If he did not survive, the work went into the public domain. The statute of 1831 (4 Stat. 436) changed this only to the extent of providing that if the author did not survive, his widow and children would have the renewal term; and if they did not survive, the work would go into the public domain. Finally in 1909 (35 Stat. 1080), the same contingencies were provided with respect to the renewal term except that if the widow and children did not survive, the renewal term would go to the executor of the author or, if there was no executor, to his next of kin.* If neither the author, widow nor children survived and there was no will or next of kin, the work would go into the public domain. Under this statutory scheme, the author, the widow, and the children have a contingent right, or expectancy, but that does not import any restriction on their freedom to assign it.

"The right of an author in his intellectual production is similar to any other personal property right" (*Buck v. Swanson*, 33 Fed. Supp. 377, 387), and the policy of the law in general is against restrictions on the alienation of rights in personal property. *Dr. Miles Medical Company v. John D. Park & Sons Company*, 220 U. S. 373, 404. The original term of copyright is freely assignable before the copyright is taken out, or even before the literary work is

* Of course, with respect to four special categories not involved here, the renewal term under the Statute of 1909 was not contingent upon survivorship. See p. 13, *infra*.

created (*T. B. Harms v. Stern*, (C.C.A. 2d), 231 Fed. 645; *Callaghan v. Myers*, 128 U. S. 617), and petitioners, of course, admit that the renewal term can be freely assigned after it has been taken out. In fact, Petitioner Fisher claims the right to publish the song under an assignment of the renewal term by Petitioner Graff.

Petitioners, in support of their contention that the contingent renewal term is not assignable, rely upon a strained construction of the Act of 1909 and the Committee Report introducing it. They lay much emphasis upon the presence or absence in the Act of the word "assigns", or of what they consider an equivalent word "proprietor". They use this approach, first, in comparing Section 8 with Section 23, second, in comparing the first proviso in Section 23 with the second proviso in Section 23, and third, in comparing the Act of 1790 with the Acts of 1831 and 1909.

In comparing Section 8 with Section 23 of the Act of 1909, petitioners state that the word "assigns" in Section 8 refers to the original term of copyright, and argue that its presence in that Section shows that the original term is assignable, whereas its absence from Section 23 shows that the renewal term is not assignable.

Petitioners' statement that the word "assigns" in Section 8 refers only to the original term of copyright is definitely wrong. The language of that section shows that the word "assigns" is as applicable to the renewal term as to the original term. Section 8 reads in part as follows:

"The author or proprietor of any work made the subject of copyright by this title, or his executors, administrators, or assigns, shall have copyright for such work under the conditions and for the terms specified in this title." (Italics ours.)

The word "assigns" refers to "the author or proprietor" of the copyright "for the *terms* specified in this title." "Terms" is in the plural and unquestionably covers both terms referred to in Section 23. The original term is defined in that Section as follows:

"The copyright secured by this title shall endure for twenty-eight years from the date of first publication. . . ."

Then follows the definition of the renewal term. This is given in the first proviso in the Section for the four special categories in which the proprietor of the original term is entitled to the renewal term, the language being

"... the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the *further term* of twenty-eight years. . . . (Italics ours.)

The second proviso covering all works not covered by the first proviso, such as the one at bar, gives the following definition for the renewal term:

"... the author of such work, if still living, or the widow, widower, or children of the author, if the author be not living, . . . shall be entitled to a renewal and extension of the copyright in such work for a *further term* of twenty-eight years. . . . (Italics ours.)

Section 8, therefore, would seem to settle adversely to petitioners the question of statutory construction which they seek to raise.

Petitioners' next approach is to compare the first proviso of Section 23 with the second proviso of that Section, arguing that the presence of the word "pro-

prietor" in the first and its omission from the second indicates the intention on the part of Congress to prevent assignments of the renewal term created by the second proviso. Of course this argument is fallacious because it would strike down an assignment of the renewal term made after it had vested as well as an assignment made while it was contingent, a result which petitioners cannot accept.

Again Section 8, as just analyzed in its application to the two provisos of Section 23, makes it clear that there is no limitation on assignability anywhere in Section 23. There is a further reason why petitioners' argument falls. In the four categories established by the first proviso, the renewal term accrues regardless of any survivorship, or of any contingency other than the registration. For that reason, it was appropriate to use the word "proprietor", and its omission in the second proviso is merely to make it clear that here the renewal term is contingent upon survivorship. The distinction drawn is not one between assignable and nonassignable rights, but between vested and contingent rights.

Finally, petitioners' third approach is to compare the Act of 1790 with the Acts of 1831 and 1909. They argue that the Act of 1790 in providing that the renewal term should continue to the author his "executors, administrators or assigns", necessarily made the right of renewal assignable whereas the omission of such words in the Act of 1831 and the Act of 1909 indicated an intent on the part of Congress to restrict the alienability of the renewal term.

Of course we believe that Section 8 of the Act of 1909 relates to the renewal term provisions of Section 23, which disposes of petitioners' argument. Moreover, if the omission of the word "assigns" is to be given effect

with respect to the renewal term, it must apply as much to the renewal term after it has vested as it applies to the renewal term while contingent, and the effect of the argument would be that the vested renewal term could not be assigned. Finally, as the majority opinion says, it may be just as well argued that the omission of the word "assigns" was

"only to prevent an assignment that would cut off the widow's and children's rights in case the author died;" (R. 98)

Petitioners argue that under the Act of 1909 the application for renewal must be made by the author, and that this evidences a public policy to prevent an anticipatory alienation of the renewal right. We do not concede that an assignee may not make an application for the renewal term if the author be living. Section 23 merely provides that the author, if living, or his widow, etc., if the author be not living, shall be entitled to a renewal and extension of the copyright

"when application for such renewal and extension shall have been made to the copyright office * * *

There is no language here specifying what person shall make the application, and for all that appears, the assignee may do so. And whether this is so or not, the language here relied on by petitioners cannot be tantamount, as they contend, to an absolute prohibition against the making of an anticipatory assignment. We have already stated our belief that Section 8 shows Congressional intent to the contrary. The Court's attention is also called to Sections 41 to 46 of the Act dealing with assignments. If Congress had any thought of prohibiting the assignment of any interest in copyright, it would have been

easy to insert a few words to that effect among these provisions.

Petitioners, and Judge Frank in his dissenting opinion, refer to certain language in the Committee report recommending the passage of the Act of 1909 as evidencing Congressional intent to make the contingent renewal term inalienable. They especially refer to the italicized portion of the following language:

"The present term of twenty-eight years, with the right of renewal for fourteen years, in many cases is insufficient. The terms, taken together, ought to be long enough to give the author the exclusive right to his work for such a period that there would be no probability of its being *taken away from him in his old age, when, perhaps, he needs it the most.*" (Italics ours.)

The majority opinion points out that the direct purpose of that part of the Committee's report relating to the renewal term was

"clearly to explain the *continuance* of a renewal term as against the substitution of a single long term. In other words, it argued for an existing arrangement—"the existing law"—and so not necessarily or clearly for an absolute prohibition. If the committee had really meant the latter, they could easily have so drafted the statute. And they could easily have stated their purpose in unambiguous words in their report." (R. 99)

The Committee had in mind not the question of alienability but the question of two terms as against a single term and the duration of copyright protection. A bill introduced in 1907 (H. R. 25133, 59th Congress, 2d Ses-

sion) provided for a single term of copyright for the author's life and thirty years. The Committee on Patents recommended its passage, and in discussing the single but long term of copyright (life and thirty years), used the following language:

"Your committee believe that it is better to have a single term without any right of renewal, and that that term should certainly cover the lifetime of the author. If an author is entitled to any protection on his work, that should not be *taken away from him in his old age, when perhaps he needs it most.*" (Italics ours.) Report No. 7083, House of Representatives, 59th Congress, 2nd Session, Jan. 30, 1907, p. 13.

This language related solely to the duration of copyright. The words italicized are identical with those in the report of the Committee on Patents in 1909 above quoted recommending the retention of two terms but extending the length to a total of fifty-six years. Obviously, the language is not concerned with restrictions on alienability.

Petitioners make much of the fact that the Committee Report on the 1909 Statute used the words "exclusive right" in stating

"your committee felt that it should be the exclusive right of the author to take the renewal term, and the law should be framed as is the existing law, so that he could not be deprived of that right."

The phrase "exclusive right" does not of itself connote inalienability. The phrase applies equally to the original and the renewal term. The Constitution and Section 1 of the 1909 Statute use the phrase to show that the rights secured to authors are "exclusive", not "non-exclusive". The Committee Report itself in the next paragraph uses the phrase "exclusive right" in exactly that sense.**

* R. 98-99.

** R. 99.

Petitioners also refer to the words in the Report "so that he could not be deprived of that right". Judge Clark points out how inappropriate these words are to express any intention to restrict the alienation of the renewal term prior to its vesting (R. 99-100). The concern which the Committee had for the author was taken care of by the continuance of the double term of copyright and the enlargement of the renewal term from fourteen to twenty-eight years.

CONCLUSION

The order sought to be reviewed is not final. There remains for final hearing an issue of fact affecting the question of statutory construction, as well as other issues which might determine the case without regard to that question. The decision of the Circuit Court of Appeals is sound and any change in the construction of the Statute, which would involve difficult problems affecting the rights of authors, and of the public, should be left for the determination of Congress in the light of present day conditions.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Relevant Sections of the Copyright Act of 1909 As Amended

§8. AUTHORS OR PROPRIETORS, ENTITLED; ALIENS. The author or proprietor of any work made the subject of copyright by this title, or his executors, administrators or assigns, shall have copyright for such work under the conditions and for the terms specified in this title * * *

§23. DURATION; RENEWAL AND EXTENSION. The copyright secured by this title shall endure for twenty-eight years from the date of first publication, whether the copyrighted work bears the author's true name or is published anonymously or under an assumed name: *Provided*, That in the case of any posthumous work or of any periodical, cyclopedic, or other composite work upon which the copyright was originally secured by the proprietor thereof, or of any work copyrighted by a corporate body (otherwise than as assignee or licensee of the individual author) or by an employer for whom such work is made for hire, the proprietor of such copyright shall be entitled to a renewal and extension of the copyright in such work for the further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright: *And provided further*, That in the case of any other copyrighted work, including a contribution by an individual author to a periodical or to a cyclopedic or other composite work, the author of such work, if still living, or the widow,

widower, or children of the author, if the author be not living, or if such author, widow, widower, or children be not living; then the author's executors; or in the absence of a will, his next of kin shall be entitled to a renewal and extension of the copyright in such work for a further term of twenty-eight years when application for such renewal and extension shall have been made to the copyright office and duly registered therein within one year prior to the expiration of the original term of copyright; *And provided further*, That in default of the registration of such application for renewal and extension, the copyright in any work shall determine at the expiration of twenty-eight years from first publication. (As amended Mar. 15, 1940, c. 57, 54 Stat. 51.)

§41. COPYRIGHT DISTINCT FROM PROPERTY IN OBJECT COPYRIGHTED; EFFECT OF SALE OF OBJECT, AND OF ASSIGNMENT OF COPYRIGHT. The copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object; but nothing in this title shall be deemed to forbid, prevent, or restrict the transfer of any copy of a copyrighted work the possession of which has been lawfully obtained. (Mar. 4, 1909, c. 320, §41, 35 Stat. 1084.)

§42. ASSIGNMENTS AND REQUESTS. Copyright secured under this title or previous copyright laws of the United States may be assigned, granted, or mortgaged by an instrument in writing signed by the proprietor of the copyright, or may be bequeathed by will. (Mar. 4, 1909, c. 320, §42, 35 Stat. 1084.)

§43. SAME; EXECUTED IN FOREIGN COUNTRY; ACKNOWLEDGMENT AND CERTIFICATE. Every assignment of copyright executed in a foreign country shall be acknowledged by the assignor before a consular officer or secretary of legation of the United States authorized by law to administer oaths or perform notarial acts. The certificate of such acknowledgment under the hand and official seal of such consular officer or secretary of legation shall be prima facie evidence of the execution of the instrument. (Mar. 4, 1909, c. 320, §43, 35 Stat. 1084.)

§44. SAME; RECORD. Every assignment of copyright shall be recorded in the copyright office within three calendar months after its execution in the United States or within six calendar months after its execution without the limits of the United States, in default of which it shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, whose assignment has been duly recorded. (Mar. 4, 1909, c. 320, §44, 35 Stat. 1084.)

§45. SAME; CERTIFICATE OF RECORD. The register of copyrights shall, upon payment of the prescribed fee, record such assignment, and shall return it to the sender with a certificate of record attached under seal of the copyright office, and upon the payment of the fee prescribed by this title he shall furnish to any person requesting the same a certified copy thereof under the said seal. (Mar. 4, 1909, c. 320, §45, 35 Stat. 1085.)

§46. SAME; USE OF NAME OF ASSIGNEE IN NOTICE. When an assignment of the copyright in a specified book or other work has been recorded the assignee may substitute his name for that of the assignor in the statutory notice of copyright prescribed by this title. (Mar. 4, 1909, c. 320, §46, 35 Stat. 1085.)

